

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 6, REGULATIONS FOR STATE)
ADMINISTRATION OF THE NATIONAL POLLUTANT)
DISCHARGE ELIMINATION SYSTEM (NPDES))

DOCKET NO. 07-002-R

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ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY
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ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S
RESPONSE TO COMMENTS

The Arkansas Department of Environmental Quality ("ADEQ") received 10 written comments and 2 oral comments during the public comment period regarding the proposed amendments to Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES). The following are the comments grouped by common issued, with ADEQ's responses to the same:

ISSUE #1

Mr. Larry Waldrop, General Manager of El Dorado Water Utilities, Mr. Greg Phillips, and Mr. Gregory Withrow, General Manager of El Dorado Chemical, oppose the proposed addition of Section 6.401(H) to APCEC Regulation No. 6.

RESPONSE #1

A Nutrient Modeling Study for the El Dorado joint pipeline was performed on February 13, 2007 to predict effects of phosphorous in the Ouachita River downstream of the proposed discharge point which was approximately 1.5 miles downstream of the H.K. Thatcher Lock and Dam.

Page 20 of the Nutrient Modeling Study estimates the downstream chlorophyll-a concentration during the critical months of July-October with a discharge flow rate 13.5 MGD and a total phosphorus concentration of 1 mg/l to be equivalent to the Ouachita River baseline chlorophyll-a concentrations. An increase in chlorophyll-a concentration for the critical months is predicted at a flow of 20 MGD. The Department adjusted the total phosphorus concentration limit of 1 mg/l by using a $13.5:20 = 0.7$ flow ratio so there will be no net increase of chlorophyll-a from the higher flow.

Therefore, based on the above information, the Department agrees to revise Section 6.401(H) from draft APCEC Regulation No. 6. The revised regulation language is as follows:

Reg.6.402 Discharge of Treated Wastewater to the Ouachita River



No permit for the discharge of treated wastewater into the Ouachita River commencing at or downstream of the H.K. Thatcher Lock and Dam in segment 2D of the Ouachita River Basin shall authorize a total phosphorous limit in excess of the following:

- (1) A proposed permit with a design flow of less than or equal to 13.5 MGD shall have a total phosphorous mass limit calculated using a total phosphorous concentration of 1.0 mg/l year-round.
- (2) A proposed permit with a design flow greater than 13.5 MGD but less than 20 MGD shall have a total phosphorous mass limit calculated using a total phosphorous concentration of 1.0 mg/l for the months of November through June and 0.7 mg/l total phosphorus for the months of July through October.
- (3) The above mass calculations are considered to be on a monthly average basis. A daily maximum mass limit, if applicable, will be 1.5 to 2.0¹ times the monthly average mass limit.
- (4) At the director's discretion, the permit may include concentration limits in addition to the mass limit(s).

ISSUE #2

Mr. Randy Thurman, Executive Director of the Arkansas Environmental Federation (AEF) made the following comments:

- A. Reg. 6.104(A)(11) — The AEF objects to the exclusion of the sections of the NPDES regulation in Section 6.104(A)(11), particularly 40 CFR 401.17 concerning pH excursions. The proposed exclusion of 40 CFR 401.17 is equivalent to the adoption of a State regulation which is more stringent than the Federal requirements. The exclusion of that Federal regulation would appear to prohibit the process of allowing excursions from pH ranges as set forth in Federal effluent guidelines when NPDES permittees continuously monitor the pH of wastewater. Likewise its exclusion would appear to do away with the authorization for the Director to adjust pH excursion requirements on a case by case basis. This exclusion could have significant financial impacts on Arkansas industries and municipalities, particularly small municipalities with lagoons. The average pH of the rain in Arkansas is below the 6 S.U. listed in Regulation No. 2.504. To exclude the Director's flexibility in setting alternative pH limits will place Arkansas' industries at a serious competitive disadvantage with those of all other states.

¹ Based on the EPA Technical Support Document for Water Quality-Based Toxics Control (page 104 section 5.4.2 paragraph 4) and 40 CFR 133.101(f).

- B. Sections 6.202(A) and (D) — The AEF requests modification of the language making it clear that approval by the Arkansas Department of Health (ADH) is only required for domestic sanitary wastewater discharges.
- C. Section 6.202 and all other applicable portions — The addition of “and Human Services” to the ADH’s title is unnecessary since the Governor is separating the two agencies effective July 1, 2007.
- D. In Section 6.401, ADEQ continues to add restrictions on specific discharges in specific waterbodies in subsections (D) through (H). The AEF believes that these discharge specific requirements do not belong in an administrative regulation and should be left to the Continuing Planning Process (CPP), the 208 plan updates, and the individual NPDES permits. The AEF requests that Section (H) be removed and that Sections (D) through (G) be removed in the next revision.

RESPONSE #2

- A. The Department disagrees with the proposed removal of this condition. In accordance with 40 CFR Part 122.44(d), States may establish water quality standards as has been done in Regulation Number 2, section 2.504, for pH. It is proposed that industries with effluent guidelines outside the water quality standards (e.g., federal pH limit of 6.0 s.u. to 10.0 s.u.) will be limited by the water quality standards at all times (i.e., pH limit of 6.0 s.u. to 9.0 s.u.). For publicly owned treatment works, the ADEQ’s Director will retain permit flexibility for pH limits under 40 CFR Part 133.102(c) (i.e., to allow pH ranges outside of 6.0 s.u. to 9.0 s.u.). No change to the proposed regulation is necessary.
- B. The Department agrees to revise Section 6.202(A) and (D) to clarify that this requirement is for domestic wastewater discharges only.
- C. The Department concurs.
- D. In response to 6.401(H), please see response #1. At this time, sections 6.401(D) through (G) of Regulation Number 6 are not open for public comment.

ISSUE #3

Mr. Jim Ulmer opposes the proposed change to Section 6.202(A). Mr. Ulmer requests concurrent permitting review by the ADH and ADEQ in order to speed the review process and reduce expenses on the regulated community. Mr. Ulmer believes that the issuance of the construction permit could be conditioned upon receipt of ADH approval rather than holding up the review process waiting for the ADH approval.

RESPONSE #3

The proposed Section 6.202(A) to Regulation No. 6 will be revised based upon the above public comment as follows. ADEQ will review each application upon submittal to ADEQ in a timely manner. An ADH approval letter will not be required to determine

that an application is administratively complete. Public notice of an administratively complete application may be made without receiving an ADH approval letter, but ADEQ will not issue the final permit until ADEQ receives an ADH approval letter. The actual revised language to 6.202(A) is "For domestic wastewater discharges only, a copy of a written request seeking an approval letter from the Arkansas Department of Health ("ADH") is also required prior to issuance of the final permit. The application must be submitted, approved, along with the approval letter from ADH for domestic discharges and a permit issued and effective before the activity applied for can begin."

ISSUE #4

In a letter dated May 29, 2007 from Ms. Jill M. Witkowski for LEAN and Ms. Cheryl Slavant stated they "strongly support establishing Total Phosphorus limits for discharges into the Ouachita River and commend ADEQ for taking action to protect the Ouachita River. Although LEAN and Ms. Slavant believe that the Total Phosphorus limits for discharges through the El Dorado Water Utilities' joint pipeline...should be more stringent than set forth in the proposed regulation 6.401(H), Lean and Ms. Slavant favor this regulation as a first step toward regulating Total Phosphorus discharges into the Ouachita River by industrial dischargers in Arkansas."

In the letter additional comments were made to support the need for Total Phosphorus limits, such as, ADEQ must set limits to comply with Louisiana's TMDL, Avoid Violating antidegradation polices, and to Comply with 40 CFR 122.4(d). Supplemental documentation was submitted on May 29, 2007, providing further justification for the need of a Total Phosphorous limit in Regulation 6.

RESPONSE #4

All comments were taken into consideration for the justification of Total Phosphorus limits on the Ouachita River and the Department concurs that a limit should be established in Regulation 6. Although it was expressed the limit should be more stringent, it is the Department's belief that the limit set forth in Regulation 6 will ensure water quality suitable for all legitimate uses without the necessity of unreasonable water treatment.

ISSUE #5

Mr. Barry W. Sulkin submitted several comments on the permitting decision for the Joint Pipeline permit. In the opinion of staff, only one of these comments is related to the proposed revisions to Regulation No. 6 (included below) and the rest of his comments are related to issued NPDES permits (not included below).

"It is my understanding that the Arkansas NPDES permitting agency is proposing to establish a rule that *"No permit for discharge of treated wastewater into the Ouachita River by means of a joint pipeline from the City of El Dorado shall authorize more than*

1.0 mg/L Total Phosphorus for the months of November through June and 0.7 mg/L total Phosphorus for the months of July through October based on a monthly average.” This would keep the permit limits for Total Phosphorus (TP) for the Joint Pipeline at least a[s] stringent as now proposed at the levels of 1.0 and 0.7 mg/L for the respective time periods that match the proposed rule. It is my opinion that due to the characteristics of the discharge water and the receiving waters, the permit limits should not be any less stringent.”

RESPONSE #5

ADEQ acknowledges these comments. However, these comments should have been submitted during a public comment period for the Joint Pipeline Permits (i.e., thirty days after public notice of a draft permit and/or during the public hearing, if one is held), not during the Regulation 6 public comment period.

ISSUE #6

a. Mr. Clyde Temple agrees with the proposed change to Section 6.202(A) and adding Section 6.401(H) to Regulation No. 6.

b. Mr. Clyde Temple , Mrs. Michelle Stegall, Mr. Michael Morton, Mr. Sam Russell, Mr. Daniel Walters, and Mr. Elsie Barron requested that the reference to this discharge being carried from a pipeline from the City of El Dorado to be eliminated from Section 6.401(H).

RESPONSE #6

a. The Department acknowledges these comments.

b. The Department concurs.

ISSUE #7

Kent Stegall supports the ADEQ draft permit the following recommendations:

a. All industrial discharges into POTW must meet the effluent limits imposed by the NPDES permit.

b. Remove any reference to a joint pipeline from the City of El Dorado from the paragraph 6.401(H).

RESPONSE #7

a. This comment is outside the scope of the revisions to the portions of Regulation No. 6 which were open for comment. However, POTWs which accept industrial wastewater must ensure that contributing industries comply with General Pretreatment Regulations (40 CFR 403), applicable Effluent Limitations Guidelines (40 CFR 405 through 471), and

local limits. These limits for the industries which discharge to these POTWs are not included in the NPDES permit for that POTW.

b. The Department agrees to revise this Section (See Response #1).

ISSUE #8

Mr. David Carruth submitted comments on behalf of Save the Ouachita (STO) and Arkansas Wildlife Federation (AWF). Mr. Carruth asked that the Department consider Mr. Temple's comments and he supports Mr. Temple's comments. Mr. Carruth submitted several additional comments related to the draft permit for a joint pipeline such as Mercury, temperature and study. AWF states that Regulation No. 6 should be modified with a broader view than just the Ouachita River (i.e. Illinois River).

RESPONSE #7

The Department is considering Mr. Temple's comments (Issue #6). Additional comments from Mr. David Carruth are not relevant to Regulation No. 6 which was open for public comments.

ISSUE #9

Mr. Nestrud submits comments on behalf of the City of El Dorado and the pipeline participants.

Mr. Nestrud requested that Section 6.401 (H) shall be removed because (Summary of his comments is as follows):

1. Oklahoma's water quality criteria for phosphorus.
 - a. Described as ridiculous and absurd.
 - b. NWA Municipalities eventually accepted Oklahoma's limit of one mg/l for phosphorous.
 - c. That agreement incorporated into Reg 6.
2. Reg 2 amended to incorporate same phosphorous requirements.
 - a. Same limit as discharges into 303 (d) list.
 - b. This program approved by EPA.
 - i. Nutrient surpluses will be addressed in 303 (d).
 - ii. A CPP appendix outlines the process to identify an appropriate criterion for nutrients and that study is underway.
 - iii. Nutrient criteria has not yet been developed or adopted.
3. Municipalities and industries in Arkansas have been working cooperatively with ADEQ for well over ten years.
4. Ouachita River comparison to Illinois River.
 - a. Proposed rule contrary to the nutrient management plan.
5. City of El Dorado has a clean phosphorous history.
6. No water quality criteria for phosphorous, no 303 (d) list for the Ouachita River, no reason to have a phosphorous limit.

7. ADEQ has decided to impose a restrictive phosphorous limit without any justification.
8. El Dorado protects the Ouachita River and has spent over a hundred thousand dollars modeling the projected impacts of phosphorous in the joint pipeline on the Ouachita River in the Felsenthal National Wildlife Refuge.
9. Fairness: Three of those are municipalities that have no phosphorous limits in their permit.
10. Randy Young asked Mr. Nestrud "Strike section H?" Mr. Nestrud "Yes".

RESPONSE #9

Please See Response #1 above.

ISSUE #10

Mr. Greg Phillips, who presented photos, graphs, and data in regard to removal of Section 6.401(H) from the proposed Regulation No. 6.

RESPONSE #10

Please See Response #1 above.

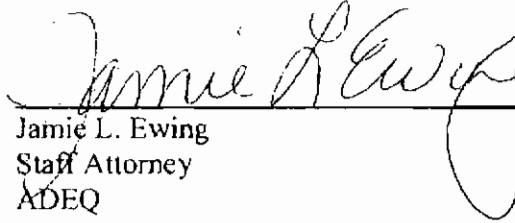
The following is a list of commenters:

- E-mail from Mr. Larry Waldrop to Mr. Doug Szenher dated May 24, 2007 (Issue #1)
- Letter from Mr. Gregory Withrow to Mr. Doug Szenher date May 21, 2007 (Issue #1)
- E-mail from Mr. Greg Phillips to Mr. Doug Szenher date May 25, 2007 (Issue #1)
- E-mail from Mr. Randy Thurman to Mr. Doug Szenher dated May 29, 2007 (Issue #2)
- Letter from Mr. Jim Ulmer to Mr. Doug Szenher dated May 29, 2007 (Issue #3)
- Letter from the Louisiana Environmental Action Network (LEAN) and Ms. Cheryl Slavant to Mr. Doug Szenher dated May 29, 2007 (Issue #4)
- Letter from Mr. Barry W. Sulkin dated May 24, 2007 (Issue #5)
- Fax from Mr. Clyde Temple, Mrs. Michelle Stegall, Mr. Michael Morton, Mr. Sam Russell, Mr. Daniel Walters, and Mr. Elsie Barron to Mr. Doug Temple date May 27, 2007 (Issue #6)
- Fax from Mr. Kent Stegall to Mr. Doug Szenher dated May 21, 2007 (Issue #7)
- Fax from Mr. David Carruth to Mr. Doug Szenher dated May 29, 2007 (Issue #8)
- Oral comments from Mr. Chuck Nestrud (Issue #9)
- Oral comments from Mr. Greg Phillips (Issue #10)

Respectfully submitted,

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